2629.

SUPREME COURT OF THE UNITED STATES.

No. 257.

THE UNITED STATES, APPELLANTS,

vs.

CHARLES MEYER, WILLIAM BENNETZ, —— HAND, AND —— DUNCAN.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, print.

Transcript of the proceedings in case No. 199—*Charles Mayer et al., claimants,* vs. *The United States, defendant—for the place named "Rancho de German," Mendocino Co.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this twenty-seventh day of April, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Charles Mayer et al., for the place named "Rancho de German," was presented and ordered to be filed and docketed with No. 199, and is as follows, to wit:

(Vide pages 3 and 4 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

WEDNESDAY, *April 28th*, 1852.

In case No. 199, Charles Meyer et al., the deposition of Ernest Rufus, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this Transcript, 5, 6, 7, 8, 9 and 10.)

THURSDAY, *May 6th*, 1852.

Case No. 199, Charles Meyer et al., on motion of the counsel for the claimants, set for hearing on Tuesday, the 18th instant.

TUESDAY, *June 1st*, 1852.

Case No. 199, Charles Meyer et al., was set in its order for hearing.

WEDNESDAY, *December 22d*, 1852.

Case No. 199, Charles Meyer, for the place named "German," called. Argument by the counsel for the claimant opened; answered by the U. S. associate law agent, and closed by the claimant. Case submitted with the evidence, and taken under advisement by the board.

THURSDAY, *December 23d*, 1852.

In case No. 199, Charles Meyer, for the place named "German," Commissioner Harry J. Thornton delivered the opinion and the decree of final confirmation of this board.

Ordered, That the opinion and decree of final confirmation of this board, delivered this day in this case, be recorded on the journal.

Which opinion and decree are in the words and figures as follows, to wit:

(Vide pages of this Transcript 25 and 26.)

Petition.

To the U. S. Land Commission for the ascertaining and settling of private land claims in California:

The petition of Charles Meyer, William Bennety, Carlos T. Glein, Hand, and Duncan, respectfully showeth, that heretofore, to wit, on the 21st of July, 1845, a certain Ernest Rufus made and presented his petition, in writing, to José de la Rosa, first alcalde of Sonoma, soliciting of him the permission to occupy a certain tract of land, known as "Rancho de German," an accurate description of which will be given hereafter. That said alcalde, on the 21st of July, 1845, gave such permission accordingly.

That said Rufus, on the 7th of April, 1846, presented a petition in writing to Pio Pico, governor of California, praying for the grant of said land so occupied by him, and that said governor thereupon, to wit, on the 8th of April, 1846, declared said Rufus the legal owner of said land, and directed the proper documents constituting title to be executed and delivered to said Rufus.

That a formal grant issued accordingly to the same on the 8th day of April, 1846; and that the departmental assembly at Monterey, in their session on the 10th of June, 1846, fully approved and confirmed the same.

That said Rufus, by various conveyances, transferred the whole of said land to your petitioners, and that the same are at present the owners of the same and in possession thereof.

And your petitioners further say, that the petitions of said Rufus, the report of the alcalde, a duly certified copy of the grant and of the original map, together with the action of the departmental assembly on the subject, are on file in the archives of California now in possession of the surveyor general of the U. S. of America for the State of California, and that duly certified copies and translations of the same are herewith submitted to your honor's inspection and prayed to be made a part of this petition; that the original grant and the conveyances from Rufus to your petitioners are in the hands of your petitioners, and ready to be offered in evidence whenever required. And your petitioners further say,

that said land is known under the name of "Rancho de German;" is situate in the present county of Mendocino, north of the fort Ross, and is bounded as follows: Commencing at a point on the coast of the Pacific ocean about one and a half league north of the fort Ross, where the "Arroyo Dichoatta" empties in the sea; thence running along the low-water mark of the Pacific ocean to the mouth of the "Arroyo Valale;" thence along the middle of said arroyo southerly about two leagues and a half; thence in the nearest direction to the Sierra; thence along the ridge of the Sierra Telsmite at a distance of three quarters of a league from the seashore, about two leagues and a half to a point due east of the mouth of the Arroyo Dichatta first above named; thence due west to the place of beginning; containing five square leagues, more or less. And your petitioners further say, that the said Ernest Rufus has in the possession of said land since he obtained the permission of occupancy by the alcalde aforesaid, and that your petitioners succeeded said Rufus in the possession and ownership thereof on the days of his said conveyances to them; that they are not aware of the existence of any title conflicting with or superior to their own. They therefore claim to be the legal owners of said land, and pray that your honorable body will confirm and validate their claim and title thereto.

CLARKE, TAYLOR & BECKH,
Atty's for Petitioners.

Filed in office April 27th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of Ernest Rufus.

OFFICE OF THE BOARD OF LAND COMMISSIONERS FOR CALIFORNIA, *San Francisco, April* 28, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Ernest Rufus, a witness produced in behalf of the claimants, Charles Meyer et al., whose petition is No. 199 on the docket of said commissioners. The witness, being duly sworn, testified as follows—the law agent of the United States was notified, and attended by Mr. Greenhow:

Questions by Claimant.

Quest. 1. What is your name, age, and place of residence?

Ans. My name is Ernest Rufus; my age 40 years; my place of residence Sonoma, State of California.

Quest. 2. Do you know the land claimed in this petition?

Ans. I do.

Quest. 3. State if you obtained a grant for it, and at what time?

Ans. I did obtain a grant for it in April, 1846, from Pio Pico, at that time governor of California.

Quest. 4. Have you examined page 4 and the first part of page 5 of document marked (C,) purporting to be a translation of the copy of said grant contained in the espediente, a certified copy of which is on file in this case, marked "B?" If so, state whether the same is a correct translation of the grant made by Pio Pico to you?

Ans. I have examined the said pages on the said document, and I think it is a correct translation, having compared it with the original grant now shown to me.

Quest. 4. Are you acquainted with the handwriting of Pio Pico? and if so, state whether the signature to said grant is the genuine signature of said Pico; and if so, at what time was said grant signed by him?

Ans. I am acquainted with the handwriting of Pio Pico, and know it to be his signature, as I saw him sign it; I know it to have been signed in the month of April, 1846.

Quest. 5. State whether you took possession of and made improvements on the land granted; and if so, at which time and to what extent?

Ans. I had possession of the land before I asked for the grant, and continued in possession until I sold it to the present petitioners in 1849. I built a dwelling-house and several Indian habitations, and grist-mill. The house and the Indians' huts were completed within one year from the time of getting the grant, and the mill was in such a state of forwardness that it was completed within fifteen months after the grant was made. I had placed some four hundred cattle and horses on it in the course of the first year after the grant, and by the time I sold it they had increased to 850. I cultivated in grain about forty acres of land.

Quest. 6. At the time you obtained the grant had you become a naturalized citizen of the Mexican republic?

Ans. I had; I obtained my naturalization papers in May, 1844, from Governor Micheltorena.

Quest. 7. State if you found any difficulty in getting your grant on account of your not being a native citizen of Mexico?

Ans. Upon my application for this land, I was informed that, from its situation in relation to the seacoast, I could not obtain the grant, although a naturalized citizen, unless certain things had been done by me, such as bearing arms for the country, or having done service as civil officer, or had introduced some useful art or manufacture; I was informed distinctly by the secretary that grants of land so situated could not be made, except to native citizens or to naturalized citizens, unless they possessed some of the qualifications above mentioned. Whereupon I proved by Andreas Pico and Juan Castañeda, who were officers then in the California service, that I

had served as a lieutenant with Micheltorena against Castro and his party under a commission of lieutenant obtained from Micheltorena; and that I continued in service some twelve or fifteen months.

Quest. 8. State whether the present claimants took possession of the land upon their purchase from you; and if so, whether they are now in possession as the recognised owners?

Ans. They did take possession of it, and hold it at present.

Questions by the United States Law Agent.

Quest. 1. Did you receive the title now presented from Governor Pico himself, or from any one else?

Ans. I received it from himself at the time when he signed it.

Quest. 2. From whom did you receive the act of confirmation by the assembly?

Ans. I did not receive it.

Quest. 3. Why did you not receive it?

Ans. Because the assembly was not in session at the time I got the grant.

Quest. 4. Do you know that the title was confirmed by the assembly; and if so, when?

Ans. I heard, accidentally, that it was confirmed, but was not sure of it.

Quest. 5. Did you remain at Angeles during all the time of the session of the assembly after receiving your title?

Ans. Immediately on receiving my grant I left Los Angeles for my land, at which time the assembly was not in session.

Quest. 6. Do you know that the assembly was in session at Angeles after you left that place?

Ans. I understood that it was, from some Californians.

Quest. 7. Did you ever receive juridical possession of your land?

Ans. I made application to the alcalde of Sonoma for juridical possession of the land; he told me that he would have occasion to survey other lands in that neighborhood soon; but the American war breaking out, he was removed from his office before he did so.

Quest. 8. When you served as lieutenant under Micheltorena against Castro, did you not also serve against Pio Pico, the governor from whom you received your grant?

Ans. I did, but he was not governor when I served against him.

Quest. 9. Did you believe that he had authority, as governor, to grant your title?

Ans. I did believe that he had authority to make a grant, and that his grant was good, because it was said that he had been recognised as governor of California by the Mexican government.

ERNEST RUFUS.

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Quest. 9. Did you believe that he had authority, as governor, to grant your title?

Ans. I did believe that he had authority to make a grant, and that his grant was good, because it was said that he had been recognised as governor of California by the Mexican government.

ERNEST RUFUS.

The law agent present.
Subscribed and sworn to before me the 28th of April, 1852.
HARRY J. THORNTON,
Com'r, &c.

Filed in office April 28th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

1846.

Espediente promovido por Don Ernesto Rufus en pretencion del terreno nombrado German.

507.

S'or alcalde 1o. de Sonoma: Ernesto Rufus, naturalizado Mejicano y arecinda do en esta frontera de Sonoma, ante V. con debido respecto y como mejor hallá lugar en d'ro digo q. teniendo un numero considerable de ganado y caballos, y careciendo de un terreno proprio para su seguridad, solicito de V. se digne conceder me licencia provisional para ql. pueda fabricar casa y meta mis bienes en el paraje valdio llama rancho de Ross, mientras occuro al gobierno para conseguir legalmente los titulos.

Por tanto a V. suplico se digne acceder á mi pedido de q. recibire gracia.

Ross, Julio 21, de 1845.

ERNESTO RUFUS.

No va en papel sellado por no haver lo en este lugar.

Jusg'o de Sonoma.

Perede ocupar lo provisi onalmente la parte interesada por el termino de un año, y si complido el tiempo no se presentare con su titulos legales sera denunciable como valdio.

Sonoma, Julio 21, de 1845.

JOSÉ DE LA ROSA.

[*Here follows map—original, page* 12.]

Pio Pico, vocal decano de la Asamblea Departamental y Gobernador provicional de las Californias.

Por cuanto Dn. Ernesto Rufus, ciudadano Mejicano por naturalizacion, ha pretendido para su beneficio personal el paraje nombrado

ص

rancho de German, en las fronteras de Sonoma al Norte, de este departamento y mas arriba del establecimiento de Ross q. ocuparan los Rusos practicados previamente los averiguaciones consernientes usando de las facultades q. me son conferidas á nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno declarandole la propriedad de el por las presentes letras de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes.

1o. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres lo disfrutara libre y esclusivamente, destinandolo al uso y cultivo q. mas le acomode.

2o. Solicitara del Juez respectivo le de la posecion juridica en virtud de este despacho por el eual se demarcaran los linderos con las mojeneras necessarios.

3o. El terreno de q. le hace donacion es puramente el de cinco sitios de ganado mayor El Juez q. lo posecione lo hara medir conformes á ordenanza quedando el sobrante q. resulte á la nacion pa. los usos que sean convenientes.

En consecuencia mando q. teniendose el presente titulo por firme y validero. Se tome razon de el en el libro a q. corresponda y se entreque al interesado para su resguardo y demas fines. Dado en la ciudad de los Angeles, este papel comun por falta de sellado á ocho de Abril, de mil ochocientos cuarenta y seis.

ANGELES, *Mayo* 8*o, de* 1846.

Dado cuenta en sesion de hoy con este espediente mando pasar á la comision de terrenos valdios.

PIO PICO, *Presidente.*

AUGUSTIN OLVERA, *Secretario.*

Ex'mo S'or Gob'or:

Ernesto Rufus, natural de Alemania, y naturalizado en la republica como consta en la adjunta carta, anté V. E. respectuosamente y como mas haya lugar en derecho me presento y digo, que en el año pasado me concedia el s'or alcalde de Sonoma, ocupar provisionalmente el terreno conocido con el nombre de rancho de Ross, q. ocuparon los Rusos en aquella frontera manifestando á V. E. que hay la equivocacion en la instancia q. presenté al solicitar dicho torreno de haberse presto el rancho de Ross, debiendo ser el rancho de German como consta en el disceno que debidamente accompano y como este al esperar el termino q. se mesenalo para solicitar el titulo correspondente de que caresco.

A. V. ocurro suplicando le tenga la condad de mandarse me estienda aquel documento de cuya gracia y espero mereser vivire

á V. E. reconocido; serviendose admitir esta en papel comun por falta de sallado correspondiente.

Angeles, Abril 7, de 1846.

ERNEST RUFUS.

ANGELES, *Abril* 8o, *de* 1846.

Vista la peticion con q. da principio este espediente lo q. en el se ha praticado con todo lo demas q. se tuva presento y ver convino de conformidad con lo dispuesto en la ley de 18 de Agosto, de 1824; y reglamento de 21 de Noviembre, de 1828, se declara dueño en propriedad del paraje nombrado rancho de German en las fronteras de Sonoma y mas arriba del establecimiento Ross q. occubar los Russos al ciudadano por naturalizacion Ernesto Rufus.

Libresele al titulo correspondiente al interesado en estencion de cinco sitios de ganado mayor y somitase esta concession á la aprovacion de la ex'ma asamblea departamental.

Pio Pico, Gobernador de las Californias, por ministerio de la ley asi lo mandé decreté y firme doy fe.

PIO PICO.

La comision de terrenos valdios a examinado con atencion el presente espediente promovido pr. el ciud'o por naturalizacion Ernesto Rufus, del paraje conocido rancho de German q. se fue concedido pr. el superior gobierno departamental con arreglo, a las leyes de la materia en este *comcepto* posse á la deliberacion de V. E. la siguiente proposicion.

Se aprueba la concession hecha al ciudadano pr. naturalizacion Ernesto Rufus del paraje conocido rancho de German jurisdicion de Sonoma en estencion de cinco sitios de ganado mayor, segun titulo librado con tha. de 18o. de Abril, del presente año conforme a la ley de 18o. de Ag'to, de 1824, y al articulo 5, del reglamento de 21 de 9'bre, de 1828.

Sala de comis, en la ciudad de Los Angeles, Junio 2, 1846.

S. ARGUELLO.

ANGELES, *Junio* 10, *de* 1846.

En sesion de este dia aprobo la ex'ma asamblea departamental la proposicion del dictamen anterior.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel E. King, surveyor general of the United States for the State of California, and, as such, now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory in department of Upper California, do hereby certify, that the eleven preceding and hereunto annexed

pages of tracing paper, numbered from one to eleven, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Fr'co, Calif'a, this 1st day of April, 1852.

SAMUEL D. KING, *Surv'r G'l.*

Translation Document C.—No. 199.—*Rancho de German.*

To the first alcalde of Sonoma: Ernesto Rufus, a naturalized Mexican and a resident of this frontier of Sonoma, with due respect and in the best legal form says, that having a considerable number of cattle and horses, and wanting a suitable piece of land for its security, I solicit you that you may please to grant me provisional permit, that I may be enabled to build a house and keep my property on the vacant location called Rancho de Ross, while I apply to the government to obtain the legal title. Therefore, I pray that you may please to comply with my petition, whereby I shall receive favor.

Ross, 21st July, 1845.

(Signed) ERNESTO RUFUS.

Not written on stamped paper, because there is none in this place.

First Justice's Court of Sonoma.

The party concerned can occupy it provisionally for the term of one year, and if at the end of that time he shall not present himself with his legal title, it shall be denounced as vacant.

Sonoma, July 21st, 1845.

(Signed) JOSÉ DE LA ROSA.

Most Excellent Governor:

Ernesto Rufus, a native of Germany and naturalized in the republic, as appears from the annexed certificate, respectfully and in the most just way presents himself before your excellency and says, that last year the alcalde of Sonoma granted me the provisional occupation of the land known by the name of Rancho de German, which is vacant, and higher up than the establishment of Ross, which the Russians in that frontier occupied, showing your excellency that there is a mistake in the document which has been presented in soliciting said land, they having written the Rancho de Ross, instead of the Rancho de German, as appears from the sketch that I duly forward; and as the period that is prescribed to me for soliciting the corresponding title is going to expire, I apply to your

excellency entreating you that you will have the goodness to order that document made out to me, which favor I hope to deserve, and for which I shall be obliged to your excellency; this being admitted on common paper, for want of the corresponding stamped. Angeles, April 7th, 1846.

(Signed) ERNESTO RUFUS.

ANGELES, *April 8th*, 1846.

Having examined the petition that heads this record of proceedings, that which has been done pursuant to it, with everything else that has been borne in mind and was proper to attend to in conformity with the requisition in the law of 18th of August, 1824, and regulation of 21st November, 1828, I declare the naturalized citizen Ernesto Rufus owner in fee of the place called Rancho de German, on the frontier of Sonoma and above the establishment Ross, which the Russians occupied. Let the proper title deed be issued to the party for the extent of five square leagues, and submit this grant to the approbation of the most excellent departmental assembly. Pio Pico, governor ad interim of both Californias, thus ordered, decreed and signed. I attest it.

(Signed) PIO PICO.

Pio Pico, senior member of the Departmental Assembly, and Provisional Governor of both Californias.

Whereas Don Ernesto Rufus, a Mexican citizen by naturalization, has solicited for his personal benefit the location called Rancho de German, in the frontiers of Sonoma, at the north of the department, and above the establishment of Russ, which the Russians occupied, after having previously made the necessary investigations, in the exercise of the powers vested in me, in the name of the Mexican nation, I have, by decree of this day, granted to him the mentioned land, declaring it to be his property by these letters patent, in conformity with the law of the 18th of August, 1822, and regulations of the 21st November, 1828, subject to the approbation of the most excellent departmental assembly, and under the following conditions:

1st. He may fence it without any prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, appropriating it to the use and culture that may best suit him.

2d. He shall solicit from the respective judge to give him juridical possession in virtue of this document, by whom the boundaries shall be marked with the necessary landmarks.

3d. The tract of land granted is merely of an area of five square leagues, (sitios de ganado mayor;) the judge who shall give possession of it will have it measured conformable to ordinance, leaving the surplus that may result, to the nation for convenient pur-

poses. Consequently I order that the present title, being held as firm and valid, it be entered in the corresponding book and be delivered to the interested party for his security and other purposes. Given in the city of Los Angeles, on this common paper, for want of stamped, on the 8th of April, 1846.

ANGELES, *May 8th*, 1846.

In to-day's session were reported and ordered to be transmitted to the committee on public lands.

(Signed) PIO PICO,
President.

AUGUSTIN OLVERA,
Deputy Secretary.

EXCELLENT SIR: The committee on public lands have examined with attention the present proceedings at the instance of the naturalized citizen Ernesto Rufus for the parcel of land called Rancho de German, which was granted to him by the superior departmental government, conformable to the laws on the subject, in virtue of which the committee submits to your excellency's deliberation the following proposition: They approve of the grant made to the naturalized citizen Ernesto Rufus of the place called Rancho de German, in the jurisdiction of Sonoma, extending five square leagues (5 sitios de ganado mayor) according to title-deed issued on the 8th of April, instant, conformable to the law of 18th August, 1824, and the article 5th of the regulations of 21 November, 1828.

Hall of committees, in the city of Los Angeles, June 2d, 1846.

(Signed) S. ARGÜELLO.

ANGELES, *June 10th*, 1846.

In to-day's session the most excellent departmental assembly approved of the proposition in the foregoing opinion.

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Record of Evidence, vol. 1, pages 190 to 193.

GEO. FISHER, *Sec'y.*

Pio Pico, vocal decano de la Asamblea Departamental y Gobernador provicional de las Californias.

{Gobierno de Dep'to [Place of the eagle.] de Californias.} Por cuanto Dn. Ernesto Rufus, ciudadano Mejicano por naturalization, ha pretendido para su beneficio personal el parage nombrado rancho de German en las fronteras de Sonoma, al norte de este departamento y mas arriba del establecimiento de Ross que ocuparon los

Rusos practicadas previamente las averiguaciones consernientes mando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno declarando le la propriedad de el por las presentes letras de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la ex'ma asemblea departamental y bajo las condiciones siguientes:

1o. Podra cercarlo sin perjudicar las travecias caminos y servidumbres lo disputara libre y esclusivamente destinando lo al uso y cultivo que mas le acomode.

2o. Solicitara del juez respectivo le de la posecion juridica en virtud de este despacho por el se demarcaron los linderos con las mojoneras necesarias.

3o. El terreno de que se le hace donacion es puramente el de cinco sitios de ganado mayor. El juez que lo posecion lo hara medio conforme a ordenanza, quedando el sobrante que resulte a la nacion para los usos que sean courenientes. En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en libro a que corresponda y se entreque al interesado para sue resguardo y demas fines. Dado en la ciudad de los Angeles en este papel comun por falta de sellado á ocho de Abril, de mil ochocientos cuarenta y seis.

PIO PICO.

Waspaso el derecho q. me esta conferido en el ariba titulo a favor de Carlos Meyer y Guillemo Bennet, y para la constancia dorneo el presente hay dia ocho de Junio, de 1849.

ERNESTO RUFUS.

Testigos: Wm. Mentie, *L. H. D. C.*

Opinion by Com'r Thornton.

Charles Meyer et al., assignees, vs. The United States. } No. 199. German.—Opinion by Commissioner Thornton, and decree of final confirmation.

The claim presented in this case is founded upon a grant made on the 8th of April, 1846, under and by virtue of the decree of the Mexican Congress of the 18th of August, 1824, and of the executive ordinance of the 21st of November, 1828, by Pio Pico, governor of California, to Ernest Rufus, whose interest therein was transferred to the present claimants by various mesne conveyances. This grant is for five leagues of land, and was approved by the departmental assembly on the 10th of June, 1846. The occupation of the land was had and peaceably enjoyed by the grantee prior to the issuance of the grant, and from thence to this time, by him and those claiming under him. The genuineness of the grant and the authority of the grantor, as well as the other facts above reci-

ted, are fully established by regularly authenticated documentary evidence from the public archives of the former governments of the county, and by other testimony on file in the case. It is apparent that the land is within the ten littoral leagues, and there is no evidence of any measurement of the track or delivery of possession thereof by any judicial officer of the former government. The objections founded on the last recited facts, and all others urged against the validity of the claim, have been already fully considered by this board and overruled in the case of Cruz Cervantes, No. 56, the opinion in which is on file in the office of the secretary of this commission. In view of all which, and in accordance with the principles of decision prescribed to this board by the act of the 3d of March, 1851, organizing the same, we declare the claim to be valid, and that it ought to be confirmed to the claimants. Commissioner Hall concurs in the result thus announced. Whereupon we now make the following decree of final confirmation, viz.

HARRY J. THORNTON.

Decree of Final Confirmation.

This board, upon full consideration of the various grounds affecting the validity of the said claim, having come to the conclusion that the same is valid, therefore now proceeds to *mak*, and does hereby make the following decree or report of final confirmation, viz: It is decreed that the said claim be confirmed to the claimants to the extent and quantity of five (5) square leagues, or sitios de ganado mayor, and for no more, being the same land described in the grant and expediente referred to therein, and of which possession was proved to have been held and enjoyed under the said grant: Provided, that the said quantity of land granted and now here confirmed be contained within the boundaries called for in the said grant; and if there be less than the said above named quantity within the said bounds, then we confirm to the claimant that less quantity, it being apparent that said quantity exceeds the minimum of two hundred varas, as prescribed by the ordinance of 21st November, 1828.

HILAND. HALL,
HARRY J. THORNTON,
Commissioners.

Filed in office December 23d, 1852.
(Signed) GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California,

do hereby certify the foregoing twenty-six pages, numbered from 1 to 26, both inclusive, to contain a true, correct and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, case No. 199 on the docket of the said board, wherein Charles Mayer et al. are the claimants, against the United States, for the place known by the name of Rancho De German.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office) at San Francisco, California, this twenty-third day of February, A. D. 1854, and of the independence of the United States of America the seventy-eighth.

[SEAL.] GEO. FISHER, *Sec'y.*

Endorsed: Filed Feb. 23, 1854.

JOHN A. MONROE, *Clerk.*

Notice of Appeal.

ATTORNEY GENERAL'S OFFICE, 15*th July*, 1854.

CHARLES MYER et al., Claimants,
vs.
THE UNITED STATES. } 199.

You will please take notice, that an appeal in the above case (a transcript of the proceedings in which was received at this office on the 15th of March, 1854,) from the decision of the commissioners to ascertain and settle the private land claims in the State of California, to the district court of the United States for the northern district of California, will be prosecuted by the United States.

C. CUSHING,
Attorney General U. S.

Endorsed: Filed Aug. 21, 1854.

JOHN A. MONROE, *Clerk.*

Petition.

To the honorable District Court of the United States in and for the northern district of California.

THE UNITED STATES, Appellants,
vs.
CHA'S MEYER et al. } No. 15.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the day of ; that a notice of appeal was filed on the

day of ; and that the land claimed lies in the said district; that the said claim is invalid: Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid. Respectfully, &c.,

A. GLASSELL,
Ass't U. S. Att'y.

Endorsed: Filed June 20, 1855.

JOHN A. MONROE, *Clerk.*

Answer.

District Court of the United States, northern district of California.

THE UNITED STATES
vs.
CHARLES MEYER.
No. 15. (L. C. Docket No. 199.)

Charles Meyer, the appellee and claimant in the above entitled cause, in answer to the petition therein filed, avers and says that his title to the land therein claimed is valid.

He therefore prays that the decision of the board of land commissioners be affirmed, and the title of the said claimant be decreed to be valid.

J. CLARKE,
Att'y for Claimant.

Endorsed: Filed June 27, 1855.

JOHN A. MONROE, *Clerk.*

Opinion delivered by the Hon. M. H. McAllister, Circuit Judge.

District Court United States for the northern district of California.

THE UNITED STATES, Appellants,
vs.
CHARLES MEYER, WILLIAM BENNETZ, CARLOS T. GLEIN, HAND, AND ——— DUNCAN, Appellees.

On the 8th April, 1846, a grant was issued, in conformity with the colonization law of Mexico of 18th August, 1824, and the general regulations of November 21, 1828, to one Ernesto Rufus, by Governor Pio Pico, by which the location called "Rancho de German," in the frontier of Sonoma, at the north of the department, and above the establishment of Russ, was granted to the said Rufus on the 2d day of June, 1846; the grant was approved by the departmental assembly.

Among the usual conditions annexed to the Mexican grants the following was attached to the one in question:

"The tract of land granted in an area of five square leagues, (sitios de ganado mayor;) the judge who shall give possession of it shall have it measured conformable to ordinances, leaving the surplus that may result to the nation for convenient purposes."

The genuineness of the grant, and the authority of the grantor,

are authenticated by documentary evidence from the public archives.

Indeed, as the case, like many others, *have* been submitted by the district attorney United States, with the understanding that where no objection is made to the genuineness of the signatures to the grant, the production of the original in this court is dispensed with, the authenticity of the documentary title in this case may be considered as established. The grantee in this case, Ernest Rufus, is the only witness sworn. He proves his having taken out the grant; proves the expediente on file to be a correct copy of the original, having previously compared them; states that he was in possession of the land prior to the issuance of the grant to him, and that he continued in possession until 1849, when he sold the rancho to the appellees.

This witness also states that he built a dwelling-house and several Indian habitations within one year from the date of the grant; that he built a mill on the land, which was completed within fifteen months from that date, and that he cultivated about forty acres of the land in grain, besides having cattle on it; and that appellees went into possession of the land at the time they purchased, and remain in possession at the present time.

Under the testimony, a full compliance with the conditions of the grant, with the single exception of not having obtained judicial possession, is established. The witness stated he applied to the alcalde of Sonoma for judicial possession, who postponed giving it, on the ground that he had other lands to survey in that vicinity, when he would comply with the wishes of witness; but the American war breaking out, the alcalde resigned, and witness was not able to obtain the judicial possession. Under the decisions previously made by this court, the failure to obtain such possession cannot, under the circumstances of this case, operate to invalidate the claim. The remaining objection is, that the land granted is situate within ten leagues of the seashore; upon this point the doctrine enunciated in the case of the United States vs. Cervantes must be decreed the settled rule of this court until reversed by a higher tribunal. The decision of the commissioners in favor of this claim must be therefore affirmed.

Decree.

In the District Court of the United States for the northern district of California.

THE UNITED STATES vs. CHARLES MEYER et al. } No. 15.—Decree. Stated term, September 10th, 1855.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause came on to be heard at a stated term of this court, on appeal from the final decision of the commissioners to ascertain

and settle private land claims in the State of California, under the act of Congress approved 3d March, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said decision was founded; and it appearing to this court that said transcript has been duly filed according to law, and counsel for the respective parties having appeared, it is hereby ordered, adjudged, and decreed, that the decision of the said commissioners be hereby affirmed; and it is further hereby ordered, adjudged, and decreed, that the claim of the appellees be confirmed to them to the extent and quantity of five (5) square leagues and no more, being the same land described in the grant and expediente filed herein, and of which possession was proved to have been held and enjoyed under said grant: Provided said quantity of land be contained within the boundaries called for in said grant; and if there be less than the said above named quantity within the said boundaries, then said less quantity is hereby ordered, adjudged, and decreed to the said appellees.

M. HALL McALLISTER,
Judge Cir. Court U. S. for dist's of Cal'a.
OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

Endorsed: Filed September 10th, 1855
JOHN A. MONROE, *Clerk.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven: present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
CHARLES MEYER et al.
D. C. 15.—L. C. 199.

In this case, on application of the United States attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States, from the final decision of this court, rendered at the present term, be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States, without delay.

Endorsed: Filed March 24th, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*